

## § 2472.10

in attendance, recesses, continuances, and adjournments; and take any other action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Panel to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

[48 FR 19695, May 2, 1983. Redesignated at 61 FR 41295, Aug. 8, 1996]

### § 2472.10 Reports.

When a report is issued after a hearing conducted pursuant to § 2472.8 and 2472.9, it normally shall be in writing and shall be submitted to the Panel, with a copy to each party, within a period normally not to exceed 30 calendar days after the close of the hearing and receipt of briefs, if any.

[61 FR 41296, Aug. 8, 1996]

### § 2472.11 Final action by the Panel.

(a) After due consideration of the parties' positions, evidence, and arguments, including any report submitted in accordance with § 2472.10, the Panel shall take final action in favor of the agency's determination if:

(1) The finding on which a determination under 5 U.S.C. 6131(c)(2) not to establish a flexible or compressed work schedule is based is supported by evidence that the schedule is likely to cause an adverse agency impact; or

(2) The finding on which a determination under 5 U.S.C. 6131(c)(3) to terminate a flexible or compressed work schedule is based is supported by evidence that the schedule has caused an adverse agency impact.

(b) If the finding on which an agency determination under 5 U.S.C. 6131(c)(2) or (c)(3) is based is not supported by evidence that the schedule is likely to cause or has caused an adverse agency

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impact, the Panel shall take whatever final action is appropriate.

(c) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas, or it may appoint one or more individuals to exercise such authority on its behalf. Such action may be taken without regard to procedures previously authorized by the Panel.

(d) Notice of any final action of the Panel shall be promptly served upon the parties.

[48 FR 19695, May 2, 1983. Redesignated and amended at 61 FR 41295, 41296, Aug. 8, 1996]

## PART 2473—SUBPOENAS

AUTHORITY: 5 U.S.C. 7119, 7134.

### § 2473.1 Subpenas.

(a) Any member of the Panel, the Executive Director, or other person designated by the Panel, may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpoena need be sought.

(c) A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Executive Director, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under consideration and the request describes with sufficient particularity the documents

sought. Service of an approved subpoena is the responsibility of the party on whose behalf the subpoena was issued. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e) Any person served with a subpoena who does not intend to comply shall within five (5) days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Executive Director. A petition to revoke a subpoena filed during the hearing, and a written statement of service shall be filed with the appropriate presiding official(s). The Executive Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpoena was issued, but shall not be deemed to assume responsibility for such service. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall revoke the subpoena if the evidence the production of which is required does not relate to any matter under consideration in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpoena issued, and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the FLRA shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the

policies of the Federal Service Labor-Management Relations Statute. The Solicitor of the FLRA shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

(g) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

(h)(1) Witnesses (whether appearing voluntarily or under a subpoena) shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States: Provided, that any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received in conjunction with official time granted for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status.

(2) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear except when the witness receives compensation in conjunction with official time as described in paragraph (h)(1) of this section.

[61 FR 41296, Aug. 8, 1996]

#### APPENDIX A TO 5 CFR CHAPTER XIV— CURRENT ADDRESSES AND GEO- GRAPHIC JURISDICTIONS

(a) The Office address, telephone and fax numbers of the Authority are: 607 14th Street, NW., Washington, DC 20424-0001; telephone: FTS or Commercial (202) 482-6540; fax: FTS or Commercial (202) 482-6635.

(b) The Office address, telephone and fax numbers of the General Counsel are: 607 14th Street, NW., Washington, DC 20424-0001; telephone: FTS or Commercial (202) 482-6600; fax: FTS Commercial (202) 482-6608.

(c) The Office address, telephone and fax numbers of the Chief Administrative Law Judge are: 607 14th Street, NW., Washington, DC 20424-0001; telephone: FTS or Commercial (202) 482-6630; fax: FTS or Commercial (202) 482-6635.

(d) The Office addresses, telephone and fax numbers of the Regional Offices of the Authority are as follows:

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(1) Boston, Massachusetts Regional Office—99 Summer Street, suite 1500, Boston, Massachusetts 02110-1200; telephone: FTS or commercial (617) 424-5730; fax: FTS or commercial (617) 424-5743.

(2) Washington, DC Regional Office—Tech World Plaza, 800 K Street, NW., Suite 910, Washington, DC 20001-1206; telephone: FTS or commercial (202) 482-6700; fax: FTS or commercial (202) 482-6724.

(3) Atlanta, Georgia Regional Office—285 Peachtree Center Avenue, suite 701, Atlanta, Georgia 30303-1270; telephone: FTS or commercial (404) 331-5300; fax: FTS or commercial (404) 331-5280.

(4) Chicago, Illinois Regional Office—55 West Monroe, suite 1150, Chicago, Illinois 60603-9729; telephone: FTS or commercial (312) 353-6306; fax: FTS or commercial (312) 886-5977.

(5) Dallas, Texas Regional Office—525 Griffin Street, suite 926, LB-107, Dallas, Texas 75202-1906; telephone: FTS or commercial (214) 767-4996; fax: FTS or commercial (214) 767-0156.

(6) Denver, Colorado Regional Office—1244 Speer Boulevard, suite 100, Denver, Colorado 80204-3581; telephone: FTS or commercial (303) 844-5224; fax: FTS or commercial (303) 844-2774.

(7) San Francisco, California Regional Office—901 Market Street, suite 220, San Francisco, California 94103-1791; telephone: FTS or commercial (415) 356-5000; fax: FTS or commercial (415) 356-5017.

(e) The Office address and telephone number of the Federal Service Impasses Panel are: 607 14th Street NW., Washington, DC 20424-0001; telephone: FTS or Commercial (202) 482-6670.

(f) The geographic jurisdictions of the Regional Directors of the Federal Labor Relations Authority are as follows:

| State or other locality  | Regional office |
|--|-----------------|
| Alabama .....  | Atlanta         |
| Alaska .....   | San Francisco   |
| Arizona .....  | Denver          |
| Arkansas .....   | Dallas          |
| California .....   | San Francisco   |
| Colorado .....   | Denver          |
| Connecticut .....  | Boston          |
| Delaware .....   | Washington, DC  |
| District of Columbia .....   | Washington, DC  |
| Florida .....  | Atlanta         |
| Georgia .....  | Atlanta         |
| Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90 degrees East. | San Francisco   |
| Idaho .....  | San Francisco   |
| Illinois .....   | Chicago         |
| Indiana .....  | Chicago         |
| Iowa .....   | Chicago         |
| Kansas .....   | Denver          |
| Kentucky .....   | Chicago         |
| Louisiana .....  | Dallas          |
| Maine .....  | Boston          |
| Maryland .....   | Washington, DC  |

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| State or other locality  | Regional office |
|--|-----------------|
| Massachusetts .....  | Boston          |
| Michigan .....   | Chicago         |
| Minnesota .....  | Chicago         |
| Mississippi .....  | Atlanta         |
| Missouri .....   | Denver          |
| Montana .....  | Denver          |
| Nebraska .....   | Denver          |
| Nevada .....   | San Francisco   |
| New Hampshire .....  | Boston          |
| New Jersey .....   | Boston          |
| New Mexico .....   | Dallas          |
| New York .....   | Boston          |
| North Carolina .....   | Washington, DC  |
| North Dakota .....   | Chicago         |
| Ohio .....   | Chicago         |
| Oklahoma .....   | Dallas          |
| Oregon .....   | San Francisco   |
| Pennsylvania .....   | Boston          |
| Puerto Rico .....  | Boston          |
| Rhode Island .....   | Boston          |
| South Carolina .....   | Atlanta         |
| South Dakota .....   | Denver          |
| Tennessee .....  | Chicago         |
| Texas .....  | Dallas          |
| Utah .....   | Denver          |
| Vermont .....  | Boston          |
| Virginia .....   | Washington, DC  |
| Washington .....   | San Francisco   |
| West Virginia .....  | Washington, DC  |
| Wisconsin .....  | Chicago         |
| Wyoming .....  | Denver          |
| Virgin Islands .....   | Atlanta         |
| Panama/limited FLRA jurisdiction .....   | Dallas          |
| All land and water areas east of the continents of North and South America to long. 90 degrees E., except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands. | Washington, DC  |

(5 U.S.C. 7134)

[55, FR 52831, Dec. 24, 1990, as amended at 58 FR 13695, Mar. 15, 1993; 59 FR 30504, June 14, 1994; 60 FR 49493, Sept. 26, 1995; 61 FR 1697, Jan. 23, 1996; 61 FR 51207, Oct. 1, 1996; 63 FR 70989, Dec. 23, 1998; 63 FR 72350, Dec. 31, 1998]

### APPENDIX B TO 5 CFR CHAPTER XIV— MEMORANDUM DESCRIBING THE AUTHORITY AND ASSIGNED RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

The statutory authority and responsibility of the General Counsel of the Federal Labor Relations Authority are stated in section 7104(f), subsections (1), (2) and (3), of the Federal Service Labor-Management Relations Statute as follows:

(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

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(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of the General Counsel, including employees of the General Counsel in the regional offices of the Authority.

This memorandum is intended to describe the statutory authority and set forth the prescribed duties and authority of the General Counsel of the Federal Labor Relations Authority, effective January 28, 1980.

I. *Case handling*—A. *Unfair labor practice cases*. The General Counsel has full and final authority and responsibility, on behalf of the Authority, to accept and investigate charges filed, to enter into and approve the informal settlement of charges, to approve withdrawal requests, to dismiss charges, to determine matters concerning the consolidation and severance of cases before the complaint issues, to issue complaints and notices of hearing, to appear before Administrative Law Judges in hearings on complaints and prosecute as provided in the Authority's and the General Counsel's rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 7123(d) of the Statute. After issuance of the Administrative Law Judge's decision, the General Counsel may file exceptions and briefs and appear before the Authority in oral argument, subject to the Authority's and the General Counsel's rules and regulations.

B. *Compliance actions (injunction proceedings)*. The General Counsel is authorized and responsible, on behalf of the Authority, to seek and effect compliance with the Authority's orders and make such compliance reports to the Authority as it may from time to time require.

On behalf of the Authority, the General Counsel will, in full accordance with the directions of the Authority, initiate and prosecute injunction proceedings as provided in section 7123(d) of the Statute: *Provided however*, That the General Counsel will initiate and conduct injunction proceedings under section 7123(d) of the Statute only upon approval of the Authority.

C. *Representation cases*. The statutory authority of the Federal Labor Relations Authority to delegate to Regional Directors its authority to process and determine representation matters is set forth in section 7105 (e)(1) and (f) of the Statute as follows:

(e)(1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(f) If the Authority delegates any authority to any regional director . . . to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action, or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60 day period.

In accordance with section 7105 (e)(1) and (f) of the Statute, Regional Directors, who are directed and supervised by the General Counsel as provided by section III of this memorandum, are hereby delegated the authority to determine whether a group of employees is an appropriate unit, to conduct investigations and to provide for hearings, to determine whether a question of representation exists and to direct an election, and to supervise or conduct secret ballot elections and certify the results thereof.

Regional Directors are authorized and have responsibility to receive and process, in accordance with decisions of the Authority and the rules and regulations of the Authority and the General Counsel, all petitions filed pursuant to sections 7111, 7112(d), 7113, 7115 and 7117(d) of the Statute.

The authority and responsibility of Regional Directors in cases filed involving such petitions shall extend to all phases of the investigation of such petitions through the conclusion of the hearing to be conducted by a Regional Office employee (if a hearing should be necessary to resolve disputed issues), including decisional action by the Regional Director after such investigation or hearing.

Regional Directors also are authorized and have responsibility to direct an election after a hearing pursuant to sections 7111 and 7112(d) of the Statute and to approve consent election agreements in accordance with section 7111(g) of the Statute.

In the event a Regional Director directs an election or approves a consent election

agreement, the Regional Director is authorized to supervise or conduct the election pursuant to section 7111 and 7112(d) of the Statute. In such instances, Regional Directors are authorized and have responsibility to determine the validity of determinative challenges and objections to the conduct of the election and other similar matters. This authority and responsibility extends to all phases of the investigation such determinative challenges and objections through the conclusion of a hearing to be conducted by a Regional Office employee (if a hearing should be necessary to resolve disputed issues), including decisional action by the Regional Director after such investigation or hearing.

Decisions and Orders of Regional Directors made pursuant to this delegation of authority become the action of the Authority:

(1) If no interested person files an application for review of the Regional Director's Decision and Order with the Authority within sixty (60) days after the Regional Director's Decision and Order; or

(2) If the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days after the filing of a timely application for review;

If no interested person files an application for review of the Regional Director's Decision and Order with the Authority within (60) days after the Regional Director's Decision and Order, or if the Authority does not undertake to grant review of the action of the regional Director's Decision and Order within sixty (60) days after the filing of a timely application for review, the Regional Director's Decision and Order will become final and binding, and the Regional Director

will certify to the parties the results of any election held or issue any clarification of unit, amendment of recognition or certification, determination of eligibility for dues allotment, or certification on consolidation of units as required.

The Authority will undertake to grant review of a Decision and Order of a Regional Director upon the timely filing of an application for review only where compelling reasons exist therefor as set forth in the rules and regulations.

The Authority's granting of review upon the timely filing of an application for review of a Regional Director's Decision and Order will not operate as a stay of such action ordered by the Regional Director, unless specifically ordered by the Authority. If the Authority grants review, the Authority may affirm, modify or reverse action reviewed.

II. *Liaison with other governmental agencies.*  
The General Counsel is authorized and has responsibility, on behalf of the Authority, to maintain appropriate and adequate liaison and arrangements with the Office of the Assistant Secretary of Labor for Labor-Management Relations with reference to the financial and other reports required to be filed with the Assistant Secretary pursuant to section 7120(c) of the Statute and the availability to the Authority and the General Counsel of the contents thereof. The General Counsel is authorized and has responsibility, on behalf of the Authority, to maintain appropriate and adequate liaison with the Federal Mediation and Conciliation Service with respect to functions which may be performed by the Federal Mediation and Conciliation Service.

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III. Personnel. Under 5 U.S.C. 7105(d), the Authority is authorized to appoint Regional Directors. In order better to ensure the effective exercise of the duties and responsibilities of the General Counsel described above, the General Counsel is delegated authority to recommend the appointment, transfer, demotion or discharge of any Regional Director. However, such actions may be taken only with the approval of the Authority. In the event of a vacant Regional Director position, the General Counsel may, without the approval of the Authority, detail personnel as acting Regional Director for a total period of up to 120 days commencing on the day the position becomes vacant. If the position remains vacant for more than 120 days, a detail must be approved by the Authority. Other details of personnel to act as Regional Director during periods when there is an incumbent in the position shall be accomplished by the General Counsel without the approval of the Authority. The General Counsel shall have authority to direct and supervise the Regional Directors. Under 5 U.S.C. 7104(f)(3), the General Counsel shall have direct authority over, and responsibility for all employees in the Office of the General Counsel and all personnel of the General Counsel in the field offices of the Authority. This in-

cludes full and final authority subject to applicable laws and rules, regulations and procedures of the Office of Personnel Management and the Authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects of such personnel except the detail in the event of a vacancy for a period in excess of 120 days, appointment, transfer, demotion or discharge of any Regional Director. Further, the establishment, transfer, or elimination of any Regional Office or non-Regional Office duty location may be accomplished only with the approval of the Authority. The Authority will provide such administrative support functions, including personnel management, financial management and procurement functions, through the Office of Administration of the Authority as are required by the General Counsel to carry out the General Counsel's statutory and prescribed functions.

IV. To the extent that the above-described duties, powers and authority rest by statute with the Authority, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

[45 FR 3523, Jan. 17, 1980, as amended at 48 FR 28814, June 23, 1983; 61 FR 16043, Apr. 11, 1996]